

**EXHIBIT 11**

**HAZARDOUS MATERIALS AND ARCHEOLOGICAL AND PALEONTOLOGICAL  
RESOURCES RISK ALLOCATION TERMS**

**A. Hazardous Materials**

All risks associated with the discovery of Hazardous Materials within the Project Right of Way at any time during the Term will be borne by Developer, except as follows.

1. [RESERVED]

2. If there occurs any release of Hazardous Materials in, on or under a Section during the course of TxDOT's operation and maintenance thereof pursuant to Section 8.3 of the Agreement, then TxDOT at its own expense shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of such Hazardous Materials in accordance with applicable Law and Governmental Approvals.

3 Except as provided in Section A.4 below, TxDOT shall compensate Developer for 50% of Developer's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport, removal and disposal of Pre-existing Hazardous Materials encountered by Developer (the "total chargeable Hazardous Materials costs") that exceed \$6,000,000 (the "Hazardous Materials Allowance") but do not exceed \$12,000,000, and 100% of the total chargeable Hazardous Materials costs that exceed \$12,000,000.

4. None of the costs and expenses related to TxDOT Releases of Hazardous Materials shall be chargeable under Section A.3 above. None of the following costs and expenses shall be chargeable under Section A.3 above or reimbursable by TxDOT:

(a) Costs and expenses to the extent attributable to Developer Releases of Hazardous Materials;

(b) Delay and disruption costs and expenses;

(c) [RESERVED]

(d) Costs and expenses that could be avoided by the exercise of commercially reasonable efforts to mitigate and reduce cost; and

(e) Developer's administrative and overhead expenses arising out of or relating to Pre-existing Hazardous Materials.

5. Within 90 days following any month in which Developer encounters any Pre-existing Hazardous Materials, Developer shall deliver to TxDOT a written reconciliation, including all invoices, receipts and supporting documentation reasonably required by TxDOT, setting forth with particularity the total chargeable Hazardous Materials costs. If the total chargeable Hazardous Materials costs exceed the Hazardous Materials Allowance, TxDOT shall pay to Developer the applicable portion of such excess set forth in Section A.3 above within 30 days after receipt of such reconciliation and supporting documentation.

6. TxDOT will retain generator and arranger status for Pre-existing Hazardous Materials and TxDOT Release(s) of Hazardous Material in accordance with Section 7.9.5 of the Agreement.

7. Developer may be entitled to schedule and performance relief to the extent that the discovery of Hazardous Materials, including TxDOT Release(s) of Hazardous Materials, constitutes a Relief Event pursuant to Section 13.1 of the Agreement.

8. Developer may be entitled to extension of the Term to the extent that the presence or release of Hazardous Materials becomes or contributes to a prolonged Relief Event, as more particularly set forth in Section 13.1.4 of the Agreement.

9. TxDOT Release(s) of Hazardous Materials is a Compensation Event.

10. Notwithstanding anything herein to the contrary, Developer shall be responsible for all Hazardous Materials Management for Developer Release(s) of Hazardous Material, even if the required Hazardous Materials Management extends beyond the end of the Term and Developer's responsibility for Hazardous Materials Management for all Hazardous Materials other than Developer Release(s) of Hazardous Material (except for liability for damages for breach of such obligations) shall end at the end of the Term.

## **B. Archeological and Paleontological Resources**

All risks associated with the discovery of archeological and paleontological resources within the Project Right of Way at any time during the Term will be borne by Developer, except as follows.

1. Except as provided in Section B.2 below, TxDOT shall compensate Developer for 80% of Developer's reasonable, out-of-pocket costs and expenses directly attributable to the handling, transport and removal of archeological and paleontological resources encountered in Developer's original construction of the Project or related Utility Adjustments (the "total chargeable archeological and paleontological costs").

2. None of the following costs and expenses shall be chargeable under Section B.1 above or reimbursable by TxDOT:

(a) Delay and disruption costs and expenses;

(b) Costs and expenses arising out of archeological and paleontological resources first discovered or encountered in a Project Segment or the corresponding portions of the General Purpose Lanes and Frontage Roads after Substantial Completion of the Project Segment;

(c) Costs and expenses that could be avoided by the exercise of commercially reasonable efforts to mitigate and reduce cost; and

(d) Developer's administrative and overhead expenses arising out of or relating to archeological and paleontological resources.

3. Within 90 days after the Substantial Completion Date of each Project Segment, Developer shall deliver to TxDOT a written reconciliation, including all invoices, receipts and supporting documentation reasonably required by TxDOT, setting forth with particularity the total

chargeable archeological and paleontological costs. TxDOT shall pay to Developer the applicable portion of the total chargeable archeological and paleontological costs, if any, set forth in Section B.1 above within 30 days after receipt of such reconciliation and supporting documentation.

4. Developer may be entitled to schedule and performance relief to the extent that the discovery of archeological and paleontological resources constitutes a Relief Event pursuant to Section 13.1 of the Agreement.

5. Developer may be entitled to extension of the Term to the extent that the presence of archeological and paleontological resources becomes or contributes to a prolonged Relief Event, as more particularly set forth in Section 13.1.4 of the Agreement.